Supreme Court, U.S.
FILED
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No. _____

IN THE
Supreme Court of the United States

GILBERT EMAN,
Petitioner

v.

ERICH H. HOLDER Jr.,
United States Attorney General,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR
THE FOURTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Decision of the Board of Immigration Appeals

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Date: November 6, 2007

File: A72 167 563 – Baltimore, MD

In re: GILBERT, EMAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Arnedo S. Valera, Esquire

ORDER:

PER CURIAM. The respondent, who is an Indonesian Christian, has appealed from the Immigration Judge's decision dated April 4, 2006. This Board must defer to an Immigration Judge's factual findings in the absence of clear error. 8 C.F.R. § 1003.1(d)(3)(i). The appeal is dismissed. The respondent's request for oral argument before the Board is denied.

We find that the respondent's arguments through counsel lack support in the record or are otherwise meritless. Many of his arguments are similar to those that we considered and rejected in our precedent decision in *Matter of A-M-*, 23 I&N Dec. 737 (BIA 2005). We agree with the Immigration Judge that the respondent's asylum application is time-barred. The

application was untimely filed, and the respondent did not meet his burden of showing he qualified for an exception to the filing deadline 8 C.F. R. § 1208.4. Even if not time bar existed, we agree with the Immigration Judge's alternate determination that the respondent did not meet his burden of proof for asylum. See, e.g., Tr. at 19-32, 58-83, 87-89; Exhs. 3, 5, 7. He did not establish past persecution or a well-founded fear of persecution on account of a ground protected under the asylum law. We further agree with her conclusion that the respondent failed to meet the more demanding burden of proof for withholding of removal. His experiences in his native lad did not rise to the level of past persecution on account of a statutorily protected ground, and he failed to establish that it was more likely than not that he would suffer such persecution on account of a protected ground. *Matter of A-M-, supra.*

The respondent waived protection under the Convention Against Torture (CAT) as an appellate issue by failing to make any meaningful appellate arguments regarding it. *Waani v. Gonzales*, Slip Copy, 2007 WL 2349280 (rth Cir. Aug.; 17, 2007). Even assuming arguendo that this issue was not waived, the respondent did not show it was more likely than not that he would suffer torture in his native land. He did not meet his separate burden of proof for CAT protection. *Matter of A-M-*, supra, at 742.

Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS, formerly the Immigration and Naturalization

Service.). See section 240 (Bb) of the Immigration and Nationality Act; 8C.F.R. §§ 1240.26(c), (f). In the even the respondent fails to so depart, the respondent shall be removed to Indonesia.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5m000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240 A, 245, 248 and 249 of the Immigration and Nationality Act. See section 240B(d) of the act.

"s/" Roger Pauley
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Baltimore, Maryland

File No.: A 72 167 563 April 4, 2006

In the Matter of	)	
	)	IN REMOVAL
GILBERT EMAN	)	PROCEEDINGS
Respondent	)	

CHARGE: 2 237(A)(1)(C)(i).

APPLICATIONS: Asylum.
Withholding of removal under INA Section 241(b)(3).
Relief from removal under the Convention against Torture.
Voluntary departure.

ON BEHALF OF RESPONDENT:	ON BEHALF OF DHS:
Cheryl Renerick	Nelson Vargas

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Indonesia, who was born in 1976. He last entered the United States on December 10, 2000.

He was issued Notices to Appear on April 10, 2003 and, now applicable in this case, on May 4, 2004. At a Master Calendar hearing, the respondent was found removable based on his pleading to the charges in the Notice to Appear.

The respondent has requested asylum, withholding of removal under INA Section 241(b)(3), relief from removal under the Convention against Torture, and voluntary departure. The respondent filed those applications for relief with the Court on October 29, 2003. In the event the respondent is removed, the country designated for removal is Indonesia. The Court has found that the respondent is removable by clear and convincing evidence. See INA Section 240(c)(1)(A). The issue before the Court is whether he is eligible for relief from removal.

Statement of the Case

The Court considered the following documentary evidence which was entered into the record: Exhibit No. 1, the Notice to Appear issued on April 10, 2003; Exhibit No. 1-A, the Notice to Appear issued on May 4, 2004; Group Exhibit No. 2, the Department of Homeland Security's evidentiary submission of July 2, 2003 (tabbed A through C); Group Exhibit No. 3, the asylum application and attachments 1 through 5; Group Exhibit No. 4, the 2002 Department of State country condition report; Exhibit No. 5, the 2005 Department of State country condition report on Indonesia; Exhibit No. 6, the respondent's brief; and Exhibit No. 7, the Department of Homeland Security's submission of the most recent International Religious Freedom Report from the State Department for Indonesia.

The respondent was the only witness to testify. Mr. Eman testified that he is from Jakarta, Indonesia and that he entered the United States, as a student in 1992. He explained that he was on a F1 student visa. He also explained that the last time he entered the United States was in December 2000. He explained that he is seeking asylum because he fears persecution as a Christian in Indonesia. He explained that he himself is a "reborn" Christian and that he became such a Christian in 2002. He explained that he was also baptized as a

Christian as a child. He explained that he goes to church regularly in the United States, which he also did in Indonesia.

Mr. Eman's parents and his sister live in Jakarta. They too are Christians and attend services regularly. He explained that his parents have been afraid in Indonesia and, for example, that people have throw rocks at their church. He also explained that he believes his life would be in danger in Indonesia and that he feels better in the United States. He indicated that while the laws may protect various religious groups in Indonesia, he has noticed that Moslems receive preferential treatment. For example, he noted that one of the individuals responsible for the Bali bombing in 2002, Amubaka Bashir, received what the respondent felt was a light sentence.

Mr. Eman also noted three incidents that made him afraid to return to Indonesia. One was the October 2002 bombing in Bali, the second was a bombing on Christmas eve is 2002 in Jakarta during which three churches were bombed. One of those was a church that the respondent attended. The third incident that Mr. Eman mentioned was the August 2003 bombing of the Marriott hotel in Indonesia.

The respondent also described a number of incidents that made him concerned in general. He indicated that he knows a pastor, Pastor Dominick who was stopped after church and was jailed after being accused of having a weapon. He noted that he has a friend who was attacked coming home from a church. He also stated that he is aware that extremist Moslems are persecuting Christians in pars of the country. He indicated that he understands that the police will sometimes say they will look for suspects and that they may not do that much.

The respondent also answered a number of questions concerning the timing of his asylum application and why he

only filed for asylum in October of 2003. He explained that he appeared for special registration with Immigration officials in the United States that was required for Indonesians following the attacks of September 11, 2001. he explained that that ended up getting him in proceedings and that while in Court proceedings, he learned that he could apply for asylum. He also indicated that he was attempting to pursue avenues of remaining in the United States legally and, for example, was looking for a work visa. The effort to look for a work visa to date has not been successful. He also indicated that he would be afraid throughout Indonesia and that he did not believe that he could live safely anywhere in Indonesia besides Jakarta and that he was afraid in Jakarta as well. He explained that Moslem extremist groups exist throughout Indonesia.

He also answered some questions posed by his own attorney and government counsel concerning his arrest which is also documented in the record. That arrest concerned shoplifting of merchandise from Cosco. The respondent explained that it was his friend who was actually stealing the merchandise. When asked on cross-examination about a probation violation for not completing his last appointment for community service and for not paying a restitution payment, the respondent readily acknowledged that he had not completed all of the terms of his probation. He stated that he had no other arrest in the United States.

Applicable Law

A. One Year bar on Asylum

INA Section 208 and 8 C.F.R. Section 1208.;4(a)(2) set a one year deadline on the filing of an asylum application. Under INA Section 208(a)(2)(B) and C.F.R. 1208.4(a)(2), an applicant has the burden of proving by "clear and convincing evidence" that an application has been filed within one year

of the date of the alien's arrival in the U.S. Exceptions to the deadline apply where "the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application." INA Section 208(a)(2)(B) and (D). Even where an exception to the one year time limit applies, the applicant is to file an asylum application "within a reasonable period given those changed circumstances." 8C.F.R. Section 1208.4 (a)(4)(ii).

B. Substantive Standards for Asylum

To establish eligibility for asylum under Section 208 of the Immigration and nationality Act, an applicant must show that he or she is unable or unwilling to return to his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or a political opinion. See INA Section 101(a)(42)(A); INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997).

The applicant bears the burden of proof and the Court must make a threshold determination of credibility. See Matter of O-D-, 21 I&N Dec. 1079 (BIA 1998). Persecution is not defined in the statute or regulations. The BIA has interpreted persecution to include serious threats to an individual's life or freedom or the infliction of significant harm. Persecution does not encompass discrimination, social unrest, or other conditions that may be unjust or unfair. See for example Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); Lee v. Gonzales, 405 F. 3d 171 (4th Cir. 2005).

An applicant for asylum need not prove that he or she would be singled out individually if the applicant establishes that there is a "pattern or practice" of persecution of "similarly situated" persons in the country and the applicant establishes

his or her inclusion in and identification with that group. 8 C.F.R. Section 1208.13(b)(2)(iii).

C. Withholding of Removal under INA Section 241(b)(3)

To establish eligibility for withholding of removal under INA Section 241(b)(3), an individual must demonstrate a "clear probability" of persecution on account of one of the five statutorily protected grounds. See INS V. Stevic, 467 U.S. 401 (1984).

D. Relief from Removal under the Convention against Torture

To be extended protection under Article 3 of the Convention against Torture, the respondent must establish that it is "more likely than not that he or she would be tortured if removed to the proposed country of removal." 8C.F.R. Sections 1208.16 and 1208.17. Under Camara v. Ashcroft, 379 F.3d 361(4th Cir. 2004), in assessing a claim under the CAT, an Immigration Court must consider "all evidence relevant to the possibility of future" and cannot rely solely on an adverse credibility determination to deny relief.

E. Voluntary Departure

INA Section 240B(b) sets out the statutory requirements for eligibility for voluntary departure at the close of proceedings.

Analysis and Findings

A. Credibility

The Court has examined all of the documents in the record and the testimony presented by the respondent and has found the respondent to be credible. He has presented a plausible account of his fears and those are consistent with his

prior statements and they are also consistent with the general country conditions reports. The Court found Mr. Eman to be candid and responsive in answering questions posed.

B. One Year Bar

However, the Court finds that the respondent's application for asylum is barred by the one year time limit. The respondent clearly did not file within the one year time limit. The respondent argues that changed circumstances materially affecting his asylum application should justify the late filing. Notably, he points out the church bombings in December 2000, the 2002 bombings in Bali, and the August 2003 Marriott bombing. The Court notes first that the Court has concluded that those incidents do not materially affect his asylum application.

This case is very much like the case considered by the Board in Matter of A-M-, 23 I&N Dec. 737 (BIA 2005). In particular, the Court is concerned that those particular events do not establish that the respondent would in fact would have a well-founded fear of future persecution on the basis of his religious. Moreover, the Court also concludes that he did not file his asylum application within a reasonable time after he became aware of those incidents. Certainly, the December 2002 and the Bali bombing in 2002 were complete over a year in advance of him filing his asylum application.

C. Asylum Claim

Even if the Court found that the respondent's application would be allowed despite missing the one year deadline, the Court would conclude that he has not satisfied his burden of proof and demonstrated that he has a well-founded fear of future persecution on the basis of his religion. In particular, he raises a pattern and practice that was also discussed by the Board in Matter of A-M-, 23 I&N, Dec. 737 (BIA 2004). The

court finds that there is simply not enough evidence in his testimony or the record to demonstrate that there is in fact a pattern and practice of persecuting Christians in Indonesia. Rather, the Court finds that there is a certain level of civil unrest and sectarian conflict.

D. Withholding of Removal under INA Section 241(b)(3)

The court finds that the respondent has not met the burden required for withholding of removal under 241(b)(3), in that he has demonstrated that there is a clear probability that he will be persecuted on account of his religion either on the basis of him individually being targeted or on the basis of the existence of a pattern and practice of persecution in Indonesia.

E. Relief from Removal under the Convention against Torture

The Court has also independently reviewed the record to examine the possibility of torture and the Court concludes that there is not a sufficient showing in the record that it would be more likely than not that the respondent would be tortured if removed to Indonesia. Certainly, the evidence in the record, particularly the Department of State International Religious Freedom Report for 2000 notes that there is a certain of sectarian violence and differences. That report, however, also notes that the Indonesian government is taking some efforts to pursue those involved and the report notes that there seemed to have recently been some advances in improving Christian and Moslem relations.

F. Voluntary Departure

The parties and the Court agree that the respondent merits a grant of voluntary departure pursuant to INA Section 240B(b).

ORDER

IT IS HEREBY ORDERED that the respondent's applications for asylum, withholding of removal under INA Section 241(b)(3), and relief under the Convention against Torture are hereby denied.

IT IS FURTHER ORDERED that the respondent is to be granted voluntary departure. He is to depart voluntarily by June 5, 2006, the maximum statutory allowable period and the Court is setting a voluntary departure bond in the amount of $500.

"s/" _____
ELIZABETH A. KESSLER
Immigration Judge